

**ZONING BOARD OF ADJUSTMENT
DECEMBER 2, 2015 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley (conflict with case 47-15), Nicholas Wallner (Acting Chair for Case 47-15), Andrew Winters (for case 47-15 only), Rob Harrison, James Monahan and Jim Marshall. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

47-15 Robert and Helen McGlashen: Applicant requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit the construction of an entrance canopy with a 6' 6" setback from the front property line where a 10' foot setback is required for property at 16 ½ South Street in an RD Residential Downtown District.

The Board for this request consisted of Acting Chair Nicholas Wallner, Andrew Winters, Rob Harrison, James Monahan and Jim Marshall.

Robert McGlashen testified. Helen McGlashen was also available to testify. Mr. McGlashen has already put up the canopy. He didn't realize he needed a permit. He moved in as tenants on the north side of duplex in 1977. The canopy was in place at that time. He feels the canopy was part of the house as early as 1906 as he found it shown in a Concord 250 book. In 1985 the canopy was in poor condition and beyond repair. In the Spring of 1985 it was demolished. There was now no protection from rain and snow as the canopy was no longer there and it accumulated on the steps and walkway. In 2011 they installed a gutter to handle the run off which worked until last winter. The ice last winter pulled the gutter away from the house. He estimated the ice weighed between 150-200 lbs. and someone could have gotten hurt when that ice let go. The new canopy peak is higher and has a steeper pitch and was designed to divert the water. On November 6, 2015 Tedd Evans, the city's Chief Building Inspector stopped to find out if they had a permit. It was noted then that they may need a variance due to setback relief needed. He built this in error as he didn't realize he needed a permit. He submitted letters in favor from neighbors.

Harrison asked if there was a canopy there prior to 1938. Mr. McGlashen is guessing that there was due to the photo in the Concord 250 book. The canopy comes out 9 feet from the house. Marshall asked if the canopy were any closer to the setback than the old one. Mr. McGlashen believes it's exactly where the other old one was. Winters asked what year the old one came down. Mr. McGlashen said it was 1985.

In favor: Raymond Chase, Lincoln Street. He is in favor of the variance. The work that has been done is attractive and a credit to the neighborhood.

In opposition: none.

Code: none.

Letters: Kevin Leonard, Margaret Lins of 18 South Street, and Mr. & Mrs. St.Hilaire (South Street) all wrote letters in favor. (see file).

DECISION: A motion to grant the request was made by Winters, seconded by Harrison and passed by a unanimous vote. Winters felt it was a reasonable use. Harrison stated that the structure doesn't protrude any further than the existing porch and it looks architecturally pleasing. They also had ice issues there which were dangerous. Marshall pointed out that they meet the 5 criteria as spelled out in the application. There is hardship to the property.

44-15 Richard Murray: Applicant requests that the Board overturn the Zoning Administrator's decision that since a determination cannot be made that a Commercial Dog Kennel (Principal Use M-8) is a prior, non-conforming, valid use of the property it is prohibited under the existing ordinance for property located at 73 Shaker Road in a RS Residential Single Family District.

Chairman Carley made note that this case, a request to overturn the Zoning Administrator's decision concerning the pre-existing non-conforming use, will be considered under different criteria than are variances or special exceptions. In order to find that the use is a pre-existing non-conforming use, the board must find that the use was active and conforming

before the ordinance making it non-conforming was passed or changed. The use must also have been continuous up to the present. The question is very specific and the Board will only be taking testimony on the vested/grandfathered rights issue.

Attorney Patricia Morris testified. She was representing Richard Murray. This is an appeal from the 10/5/15 decision of Zoning Administrator Craig Walker. He concluded that there was not enough information to determine that it was a legal use. This use has been in existence since 1976 and had complied at that time. The zone at that time permitted a commercial kennel as a use by right. Mr. Murray also continued his use lawfully throughout the years. This is a prior nonconforming valid use. This matter started in 2010 when Joe LaBontee approached Mr. Murray about an invalid use. Attorney Richard Uchida was retained at that time and on 2/21/2011 there was a letter submitted to the office. After that, the City of Concord did not take any further action. In August of 2015 Mr. Walker reopened the case. Attorney Morris then got involved and contacted Mr. Walker. (C-27 Commercial Kennel zoning ordinance and fencing, tax returns in 2011 were incomplete and unsatisfactory.) Attorney Morris supplied the tax returns and numerous affidavits saying that the entire kennel area was fenced. Mr. Walker couldn't conclude it was completely fenced in and compliant and therefore ruled it was not vested. She showed a story board with a subdivision map dated 1981. The family residence was located at 59 Shaker Road (1.83 acres) and the other lot was 102 Mountain Road which is 8.4 acres. Dog Breeding was begun around 1974, 1975 and full breeding in 1976. There was an old chicken coop and an old shed on 102 Mountain Road. In 1976 Mr. Murray modified it into a dog shed and enclosed it. There were runs and all was enclosed by fencing. A commercial kennel is not a thing but a use. That use extended to and encompassed the entire Mountain Road property. The kennel (structure) was located about 60 to 100 feet away from his house. In 1981, 102 Mountain Road was subdivided. That subdivision created a lot which is now 73 Shaker Road where the Murrays reside now and at that time condensed the kennel onto a 2.14 acre lot at 73 Shaker Road.

Carley asked if the commercial kennel was not ever physically moved. Ms. Morris stated that the commercial kennel is a use. The commercial kennel was always at 102 Mountain Road. Carley asked again if it was the use ever moved. Ms. Morrison said no. Carley asked if he had gone there in 1976 he'd find a dog Kennel and if he went there now he'd find a dog kennel? Ms. Morrison said yes. Monahan asked how much of the parcel was fenced. Ms. Morris stated that C-27 requires the kennel structure area to be fenced. The commercial kennel (land) doesn't need to be fenced. The kennel area that is required to be fenced, where the dogs are housed, a physical location, comprises the commercial kennel but is not the entire commercial kennel. Monahan asked if there was a kennel there in 1976. Ms. Morris stated that evidence was provided, tax records from 2002-2014 to show consistent and constant use. C27-1 requires that the lot must be more than an acre; they meet that criterion. It also requires that the use shall not be within 50 feet of a dwelling. There was one dwelling at that time at 59 Shaker Road. The Kennel use showed the kennel at 102 Mountain Road and extended into the 8.4 acre lot. C27 – does not define commercial kennel use. She has 3 affidavits. Monahan asked how they control the use. Ms. Morris stated that the kennel was fenced out and towards 102 Mountain Road (northerly). The fenced area was enclosed and dogs would need to be taken out of that area to run the rest of the acreage. Monahan asked if she was saying the entire parcel was the kennel Ms. Morris said yes. He asked if that included the 59 Shaker Road dwelling. Ms. Morris said no. There was no commercial use there at the house. Monahan asked if today there were any commercial kennel use on the 59 Shaker Road lot. Ms. Morris said no. The commercial kennel use was never at 59 Shaker Road, it was on the remainder of 102 Mountain Road. The lot (102 Mountain Road) was subdivided and the kennel area is fenced in and it was condensed down to fit on that lot (73 Shaker Road). Monahan asked what year 59 Shaker Road parcel was created. Ms. Morris stated that the lot was created in 1948. Carley asked why the entire property constitutes a kennel. Ms. Morris stated that they were talking about a use, not a structure. Carley asked what year Mr. Murray moved the kennel house? The kennel house was moved in 1981. Carley asked if he continually operated the kennel during that time. Ms. Morris said he did. She submitted the tax records. Carley asked about the letter from Craig Walker regarding 73 Shaker Road. Ms. Morris stated that Mr. Walker needs them to prove that in 1976 there was a compliant commercial kennel. She's proving that the use has been consistent. Carley asked if it was true in 1976 and when he moved in 1981, was it still true? Ms. Morris said yes, in the new location that had the acre, the 50 feet and the fence. She showed photographs. Carley asked where the fence was in those photographs. Ms. Morris stated that it was a metal chicken wire that ran off the sides. They are hard to see. That is why they got affidavits. Carley asked if any of their photographs show a fence. Ms. Morris stated that there was none that you can see with the naked eye. Her clients say as far back as 1976 it was fenced. Wallner questioned the 50 foot separation on the photographs. Monahan asked where the fenced kennel area was in 1976. Ms. Morris showed him the location on the map. It was 60 feet from the corner of the garage. Wallner asked what the property dimensions on the road were. Mr. Walker said about 150'. Wallner asked how wide the house lot was. Mr. Walker said 176-150 feet of frontage. Monahan asked what year the kennel was moved. Ms. Morris said that in 1981 the subdivision was done and when new home was built the kennel use was moved from 102 Mountain Road. Monahan asked if, in 1976, the address on Shaker Road

included the fenced in area. Ms. Morris said it did not; it was on the Mountain Road property. The kennel area was on the large Mountain Road lot until 1981 when it was moved onto the newly subdivided lot. Monahan stated that the kennel area has to be fenced and has to be a continuous use. Ms. Morris stated that it doesn't have to be in the same location on the property. They just put another fenced area and abandoned the other area they used. The kennel was on the 102 Mountain Rd property until it was moved to the Shaker Road lot just prior to subdivision. Monahan asked if the kennels areas were used continuously. Carley understood that she said earlier that they moved the fenced area in 1981. Ms. Morris said yes and the dog houses were moved up there as well. She supplied 5 affidavits. The use was and is 50 feet from the dwelling. They submitted 40 years of tax returns, affidavits, and photographs to prove their case. There is sufficient evidence to make a determination. In 1976 his commercial kennel use was conforming and today, at 73 Shaker Road, it is still conforming. She made an error as she should have put in 28-8-2 (check with Craig). She spoke of equitable estoppel. Mr. Murray relied upon the City's silence for 4 years. The City knew he was continuing his operation. There was no contact from the City. Silence, in the law, is enough to create estoppel. The City allowed him to continue from 2011-2015. He has downsized from 25 dogs to 17 dogs. There is sufficient evidence to make a determination.

Carley recapped the case as follows: the kennel was at 102 Mountain Road in 1976 and included old chicken sheds and fenced in runs. At that time it met the criteria for enclosure, the size of the lot and the distance to the house. In 1981 a subdivision took place and the kennel was moved to another location on what had been 102 Mountain Road but became the subdivided property (73 Shaker Road) and at that time the fenced in kennel area, lot size and distance from a residence criteria were still met. The business has been operated continuously as a breeding/dog kennel from 1976 to today. The tax returns indicate an address of 59 Shaker Road, which was because his office and his home was the other property.

Monahan asked about other affidavits she was submitting. Carley stated that there are no photographs showing the fence. Ms. Morris said she walked the fence line 2 weeks ago. She can see evidence of the 1976 fencing which was chicken wire. Wallner noted that in the affidavits there is nothing that gives him information regarding the distance from the house. The 3 affidavits she submitted tonight state that the kennel use was at least 50 feet from the dwelling. Monahan asked if the shed or fence were 50 feet away. Ms. Morris stated that the shed was 50 feet away.

In favor: none.

In opposition: Walker noted there was an entire package submitted.

****Ralph Wilson:** 68 Shaker Road, which is 250 feet from the Murray's home diagonally. He has lived there all his life except a year and a half. He moved back in 1970. He has known Mr. Murray all his life. In the years being discussed Mr. Murray had no kennel. Later on he had one for his own personal dogs but he wasn't doing this commercially. They were his own personal dogs: hunting dogs. There was a small kennel in front of his home less than 50 feet away and it housed a small puppy. He never heard barking dogs until 1981. There were no dogs in those chicken coops; none whatsoever. The 102 Mountain Road property didn't belong to Mr. Murray. It was Mr. Murphy's grandmother's property. It wasn't his until 1981. In the mid 1990's he helped Mr. Murray increase the size of the kennels that were attached to his home. Perhaps that was a commercial kennel in the 1990's. But it wasn't commercial in the '80's. He submitted photographs of his kennels to date that are basically attached to his house. There are some attached to the back of his house. There is supposed to be 150 foot setback from any commercial kennel to any residence. Carley asked when the photo was taken. Mr. Wilson said the photo was taken less than week ago. There is a date stamp on the photo. Mr. Murray has increased his kennel in the last 4 to 5 years. He has had loads of fill brought in to fill in a gully.

****Douglas Hicks:** 131 Shaker Road. He owns properties on 95 Shaker Road. He has resided there since 1960. He has known Mr. Murray very well. He reiterated what Mr. Wilson said. He doesn't believe there was any kennel on that property in 1976. He doesn't recall any kennel work going on until after the subdivision in 1981. Mr. Murray's dad had a house built on that road also. He's always had hunting dogs, but not a kennel. The operation today is a significant operation. It doesn't resemble what was there in 1981. He wouldn't speak to this if it wasn't such a tale. The fact is that there was no kennel in 1976 or 1973 or 1974. In 1981 there was a kennel, but it was very small.

****Joseph Richard,** 74 Shaker Road. The photos submitted came from the 2nd story of his home. He lives within 150 feet of Mr. Murray's home. He's lived there almost 20 years. When he moved in there was no fence around that property. There was a caged in area out back. Every 5 years he's added 5 or 6 feet to the fence to keep the noise from the barking dogs down. There was a 5 x 8 pen with a grade stake. He's constantly had issues with the dogs being loose and barking

. He's handed over 6 dogs to the Police Department to bring back to Mr. Murray. In 2012 Mr. Murray started building a stockade fence across the front of his property. The smell that permeates from that property is pungent. He's expanded out back. He has a small fenced in area on the left hand side of his driveway. Traffic is a concern; puppies being bought during the weekend. Monahan asked when he moved in. Mr. Richard said he moved in in 1996 or 1997 and has been there ever since. He asked if the Shoreline Protection Act does not prohibit building within 75 feet of water. There is a stream near the property. He believes Mr. Murray is within 5 feet of the water. (The Chair advised those issues were outside of the question that was before the Board.)

**Mark Wilson, the son of Ralph Wilson. He wanted to attest to the fact that he never saw any dog kennels or fence at either place in all the years he lived with his parents. He lived with his parents until he was 20 years old; 1969 through 1987 – somewhere in there. There were never dogs there or fencing until the 1980's. He now resides in Penacook.

Code: Craig Walker commented on the equitable estoppel question that was brought up. April 25, 2011 Mr. Uchida contacted him by email asking if there were any additional information Mr. Walker needed. On 4/27/11 Mr. Walker replied to him. He read email into the record. Subsequent to that Mr. Murray came in with a letter from the State of NH DOA looking for Mr. Walker to confirm that he'd decided it was a commercial kennel. Mr. Walker would not sign off for the State of NH as he had not yet made a determination. He has not been on the site as Mr. Labontee was handling the case.

Carley read letters and emails into the record. A letter from the residence of Shaker Road Joseph Richard, Rob Wilson, Lisa Linehart. Andrew Lose, Gene Ray, Ann Lane Gray, etc. see file. All live on Shaker Road. They state that Murrayville Kennels was not registered to do business in State of NH until May 2012. In 2012 the kennel was expanded to include one in front of his home. There were advertisements for Murrayville Kennel pulled off of web pages dated 8/15. Wallner can't see where in the advertisements date back to the mid 70's. Marshall stated it needed to be determined.

Rebuttal: Craig Walker gave Carley a letter (from Attorney Uchida dated 2011) that discusses fencing in the front yard. Carley stated that the letter says that the front pen is to house Mr. Murray's own dogs. Ms. Morris stated that she agrees with Attorney Uchida's 2011 statement that the front yard kennel is for his personal dogs. They have almost always been kept separate from the commercial dogs. The stockade fence that was brought up is not part of the kennel. They were put there as sound barriers to appease the neighbors. They were to try to limit the dogs' view of the road to alleviate the barking. There was a lot of testimony stating that they "didn't believe or didn't see". Photographs show there were plenty of dogs there in 1976, 1977 and income tax returns also show that. In 2010/2011 commercial kennel criteria changed so he couldn't relicense with the State of NH. The advertisements submitted were advertisements and puffery. She has 10 statements from 2011. There was testimony that there was fencing around the kennel area. The information they put forward was credible. Carley asked how many dogs. Ms. Morris stated they had 25 but reduced the number to 17. How many dogs in 1976. Mr. Murray said he had 3 or 4 dogs at that time. Carley said that that was an expansion. Attorney Morris said it was not and explained why. The growth of the business is protected. Monahan asked if in 1976 he had a dog breeding enterprise that lost money. Ms. Morris said yes. Monahan asked Craig Walker for a definition of a commercial kennel. Walker stated that there wasn't a definition in the Ordinance in 1976 or 1977. Ms. Morris said that it was a facility for housing dogs, cats or other pets, etc. per the Glossary of the Zoning Ordinance. Walker stated that ordinance today lists it as kennel use under primary uses as opposed to an accessory use so if you are training, selling, raising, etc. for financial gain that would be a kennel use. It is not dependent upon being licensed by the State to be a Commercial Kennel.

DECISION: Carley gave an overview of the testimony and information provided and heard by the Board this evening.

Carley stated that the question is: does the Board believe that this is grandfathered and if so they would then overturn the ruling or do we believe he is not grandfathered?

Marshall feels that they have heard enough information and testimony that he feels the appellant does meet the criteria. The issue of expansion is not on the table today. The fourth criteria about substantial impact on the neighborhood could be an issue. Mr. Murray is going from 3 dogs to 25. He feels that the use does qualify as a non-conforming use.

Wallner stated that there is a lot of ambiguity for him; i.e. the fencing issue was unclear. The tax returns say he was in business then. He is leaning more towards grandfathering.

Monahan said that there is no question he meets lot size. The affidavits stated that they are not within 50 feet of the dwelling. He struggled with the kennel area. In 1981 it became a more sizeable enterprise and in 1976 he wasn't sure it would have met his definition of a commercial kennel but there was no definition in the Ordinance.

Harrison agrees. Mr. Murray did file a tax return. It isn't defined how many dogs makes a commercial kennel. It does take time to build a breeding stock.

Carley is inclined to agree with the other members. Question of the fence is ambiguous. No reason to assume that a sworn affidavit is a lie. The tax returns speak for themselves.

Monahan is not sure that Mr. Walker made a mistake or that the Board overturning his position means he made the wrong decision. Mr. Walker is asked to rely on the information presented if there is a question of doubt it is more appropriate for the Board to act on those.

A motion to overturn the Zoning Administrator's decision was made by Marshall, seconded by Harrison, and passed by a unanimous vote.

41-15 O'Reilly Auto Parts: Applicant requests a Variance to Article 28-6-9 (a), Table of Maximum Sign Dimensions & (b), Permitted Building Signs to install two 70 s.f. building signs with a total combined area of 140 s.f. where the maximum square footage allowed, based on building frontage, is 111 s.f. for property located at 189 Fisherville Road in a CG General Commercial District.

George Goodwin of O'Reilly's and Josh Swerling of Bolen Engineering testified.

Mr. Swerling stated that the actual wall sign application is for 170 s.f. and the second sign is different than the details included in the final application. Walker said they cannot go forward. If what you are bringing forward is not what was advertised or submitted in the application you cannot go forward with the hearing. Mr. Swerling stated that the sign facing the street is 70 s.f. and is what requires relief. It is a channel letter sign, it is not a box. It is actually 59 s.f. if you do the letters individually. The width of the lot is 150 linear feet. The long narrow lot is unique to this specific parcel within the zoning district. Monahan asked if the lot were bigger would they build the building to create the size sign you want. Mr. Swerling said that he was not specifically saying that. Monahan asked if this building is existing or new. Mr. Swerling said it is a proposed building. Carley asked where they are in terms of the criteria. Walker said what was submitted to ADR and on the application and the numbers given to him show the side sign as 49" x 24" which was the 99.87 s.f. on that side and the one on the front was 49" x 19" and application says 17" x 48" which is 69.57. So the application submitted was for different size signage and there were no others submitted with the variance application.

Mr. Swerling stated that the 99.87 and the 69.87 are the signs that haven't changed. When they submitted for the variance application they didn't include the detail for the 99.87 s.f. sign.

Carley stated that the 70 s.f. is on the gable end. It is under 100 s.f. on the parking lot side. Total combined area of 170 s.f. Carley stated that they will need to re-notice the case. The Board cannot hear it as it's not noticed properly. They cannot recess the case either. Walker stated that the case needs to be reapplied for and re-noticed.

Mr. Swerling wanted a sense from the Board. Carley said they cannot discuss detail other than at a public hearing and as it was noticed improperly they cannot begin a public hearing or make any determinations.

42-15 Barlo Signs for Team Kia: Applicant wishes to install a second freestanding sign and requests a Variance to Article 28-6-9(c), Permitted Freestanding Signs, Section (1), to permit 2 freestanding signs on a single lot with a combined area of 66 s.f. (36 s.f. for the existing sign + 30 s.f. for the proposed sign) where one freestanding sign of up to 78 s.f. would be permitted for property located at 158 Manchester Street in a CG General Commercial District.

Paul Martin of Barlo Signs testified. The previous occupant enjoyed 2 signs on the property for quite some time. Kia moved in and they couldn't install on their signs on the existing steal pole. The previous owners they took the sign down

and took the sub base. They would have been granted a permit if they had been able to use that pad. They had to move to another location. They reduced the square footage to 66 s.f.

Carley confirmed that the variance is for 2 signs and the two signs were there before. The two signs on the application are at different locations on the lot. Opposite corners? Mr. Martin said yes. Walker said that they would have to move the sign back due to the taking of property to widen road.

Monahan asked why they needed to remove the previous sign all the way down to the footing. Mr. Martin said that the sign belonged to Ford and they took it when they left. Are the signs illuminated? Mr. Martin said that they were internally illuminated. Marshall asked if the second sign is the one they are requesting relief from. Mr. Martin said it was. The Lincoln sign will be replaced and it will be a smaller size.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to grant the request was made by Wallner, seconded by Harrison and passed by a unanimous vote.

43-15 Jutrus Signs for the Rowley Agency Inc.: Applicant requested the following:

1. A variance to Article 28-6-9, Table of Maximum Sign Dimensions, to install a third building sign of 298 s.f. for a combined total of 373 s.f. of building signage where 150 s.f. are permitted,
2. A variance to Article 28-6-7, Signs Prohibited Under this Ordinance, Section (i), to permit the third (298 s.f.) building sign to be installed 30 feet above grade where the maximum height allowed is 25 feet for property located at 45 Constitution Avenue in a OCP Opportunity Corridor Performance District.

Cathy Champagne of Jutras signs testified. She submitted a slide show. It showed the existing building. They are asking for 298 s.f. (373 s.f.) of signage vs. 150 s.f. allowed for the building sign. The slide showed what the sign would look like. Carley asked if they were taking over the entire building. She stated that they are taking over the majority with an additional small tenant. This is the LEED building with the plants on the roof. They need an additional variance due to it being 27.5 feet from grade. She showed views from I393. She also showed how they calculated the size of the letters. Monahan asked if there were any signage on the building now. Ms. Champagne stated that there was a small sign there now.

Carley: according to your calculations, if the sign were smaller it wouldn't be legible from the highway? Ms. Champagne stated that was correct. Wallner asked about the smaller sign. Carley asked how much of their business is walk-in traffic. Ms. Champagne stated that it is not really for walk-in business. It's to identify the building. Wallner asked who else has access to the parking lot. Monahan was concern with the impact of traffic from I-393 as it is a high speed area. The Ordinance is trying to limit the size of signage in that area within 150 s.f. The "Insurance Bonds and Benefits" sign is for the local traffic, could it be smaller. Ms. Champagne stated that the sign over the door is primarily to let people know what door to go in. Monahan asked which is the third sign being requested. Craig Walker stated that it is the 298 s.f. sign. Monahan asked if they tried to work within the 150 s.f. allowed. She did but then the letters would be less than 30" high which wouldn't be legible from the highway. If the sign is smaller and you can't read it, it would be a worse distraction. The name of the business has a lot of letters in their name. Monahan asked if they were trying to advertise to traffic on I-393. Ms. Champagne stated that was correct. Monahan asked if there were other buildings in that area that are exceeding their size. Ms. Champagne stated that she did not know. The property is unique as it has a view from in that short little turn area of I393. Harrison asked if the letters would go beyond the masonry. Ms. Champagne said it would not. Carley discussed her calculation of the letter size.

Monahan asked if she calculated the size from Constitution Ave. Ms. Champagne said she did not because a big part of the price of the building was visibility of the highway. It is reasonable when a business buys a building and they relocate they should be able to expose the brand.

In favor: none.

In opposition: none.

Code: none.

DECISION: Marshall asked about the Grappone Conference Center and Hotel, do they have variances? Walker felt that they did come before the Board. Monahan also made note of the variance for Hesser College at Exit 16 of I93.

Wallner stated that the sign for BAM's and SHAW's is readable from highway.

Carley stated that this is in the OCP district area and it's one of the few places in the Master Plan where they were able to plan in advance of anyone building anything. There was a certain intent in the Zoning Ordinance concerning the appearance of things in that area. He sees this as a little different from the signs the Board approved on the back of the old Ames Plaza. An oversized sign doesn't seem to be consistent with the intent of the Ordinance or Master Plan in this area. The sign is way out of proportion. Building is in proportion with the neighborhood it is in. There isn't a hardship. You can have a reasonable sign on that building without it being so large.

Marshall doesn't believe it was intended to be a high traffic area.

DECISION: A motion to deny both requests was made by Harrison, seconded by Monahan and passed by a unanimous vote.

45-15 Jim Netto: Applicant wishes to legitimize an existing pergola and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure with a two (2) foot side and a five (5) foot rear setback for the rafter extensions where a 10' side and 20' rear setback would be required for property located at 52 Chesley Street in an RD Residential Downtown District. (revised for December 2, 2015 ZBA Meeting)

Does the Board find that it is a new case? What is different? Jim Netto said he removed the Plexiglas roof structure. He will mutilate the structure and reduce it and move it closer to the house if he must do so. He can take 6 feet off of it and it will give him a 5'-6' setback to the back of his yard and a 2' setback to the side of his yard. His garage is right on the property line and his neighbor's property is very close.

A Motion by the Board that this is a new case was made Wallner, seconded by Monahan and passed by a unanimous vote.

Jim Netto testified. The setbacks are increased and there is no roof on it. He will make an attempt to comply with the setbacks. There is only so much he can do to keep the structure as it is and keep the enjoyment factor. Carley felt that the Board's main concern was the roof and drainage.

Marshall asked if the side setbacks were 6" prior. Mr. Netto said yes.

In favor: none.

In opposition: Suzanne Isabelle, 18 Thompson Street. Her property is to the rear of his. She is concerned that the application was not noticed properly. The revised version of the application to her by 11/25/15. Walker: the degree of the variance was reduced. They reduced the intensity of that request and moving further away from the property line and as long as it was reduced they could modify the request. She has lived in this neighborhood a long time – 5th generation of 6 in the home. She's not opposed to the pergola as a whole there is a small amount of space between and it clusters everything pretty tightly. She would rather see the minimum for the dimension for an accessory building followed. It was stated that it was an 8x 32 originally when it was originally a 10 x 32. It is still now 260 s.f. even cut down. Walker showed them the aerial photograph. She compared other approvals the Board had made to this request and how it differed. It is way too big for such a small lot.

Code: none.

Letters from Dot Sweet of 12 Myrtle Sweet in favor of the request. William Bonney of 13-15 Fayette Street also in favor of the request. Remi Hinxhia, 16 Thompson who is in favor. Theodora Hinxhia in favor. L. Laffey 18 Thompson Street in opposition who states that the drawing is not to scale. She also made the same points as Ms. Isabelle.

DECISION: A motion to approval the request was made by Wallner, seconded by Marshall and passed by a unanimous vote.

Wallner stated that from the first meeting the Board had issues with drainage and the roof. There were no comments regarding the setbacks. Monahan asked what the reason was that the pergola was put this close to the property line. Carley didn't remember why but asked Mr. Netto to come forward to answer. Mr. Netto built it the size and where it was due to the contour of the side of his house which has a dog leg. He built it while they were renting to fill that void of space right there. They come off their back porch steps and come right in front of it.

46-15 Dennis Molnar for Concord Craft Brewing Co.: Applicant wishes to establish and operate a Micro-Brewery producing less than 15,000 barrels a year, as defined in the application, and requests a Variance to Article 28-2-4(j), The Table of Principal Uses, to permit the "bottling of beverages" (principal use L-6) where such use is not permitted for property located at 113 Storrs Street (ground floor level) in a CBP Central Business Performance District.

Carley said this is similar to a request for a property right nearby that the Board approved a similar request for Mr. Molnar. Carley asked him to fill in any differences between the two.

Dennis Molnar testified. The October variance went through. The size of the operation proved to be too large for the Pleasant St. Extension space. They looked for alternative sites and found one with a loading dock and cement flooring as well as an 11+' ceiling. It would be a more adequate space for their operation. It allows for the use of larger equipment. They would be using a 15 barrel system vs. 5-7 barrel system. The goal is to have a more efficient operation. Their goal would be to brew once a day.

Carley asked if they were still going to have a tasting room. Mr. Molnar said that they were but they are still not planning on food or a restaurant. Carley asked if the deliveries would be the same fashion as before. Mr. Molnar said that they would. (Someone will come once every two weeks.) At this location they have a delivery dock.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Harrison on same basis as the original approval, seconded by Wallner and passed by a unanimous.

MINUTES: Motion to approve the Minutes of November 2015 was made by Wallner, seconded by Harrison and passed by a unanimous.

Walker informed the Board that the Superior Court hearing in November regarding the Reserve Place solar panel. The judge is taking it under advisement.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT